

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FCC MAIL ROOM

In the Matter of)
)
Revision of Part 22 of the) CC Docket 92-115
Commission's Rules Governing) Part 22.919
the Public Mobile Services)

DOCKET FILE COPY ORIGINAL

REPLIES TO OPPOSITION TO PETITIONS FOR RECONSIDERATION
FILED BY TIA AND McCAW CELLULAR

MTC Communications(MTC), a small minority owned independent Radio and Cellular Service Company, submits these comments in response to the opposition of those filed by CTIA and McCaw against the Petitioners(including TIA, C2+, Ericsson, Celltek, M.C. Stephan, Z.L. Gibson, Matsushita, Cellular Paging, and Sound & Cell) for reconsideration of Part 22.919 of the rules dealing with Electronic Serial Numbers (ESN) of cellular telephones.

SUMMARY

We support the need for the Commission to do something to combat fraud. We support technical rule 22.919. However we oppose most of the comments in paragraphs 58 to 63. All of the petitioners including TIA and Ericsson were unanimous that this rule will not have any impact on cellular fraud. In fact, the rule's impact will be on the public/consumer who will have difficulty getting their cellular phone repaired. The public will also be denied low-cost and high function extension phone service that can be used on any system in the country instead of just a few markets as provided by the

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carriers today. If the rule is enforced then hundreds of small firms will be driven out of business. While the Commission has had rules on the books regarding ESN's since 1981 -- the Commission has never enforced its own rules against the manufacturers who are suppose to build cellular telephones so that "The circuitry that provides the serial number must be isolated from fraudulent contact and tampering. Attempts to change the ESN should render the mobile station(cell phone) inoperative." Anyone with a \$35 software package and a PC can electronically change the ESN on most Motorola(they have highest market share: 26%) and NEC phones(see Exhibit 3 of our reconsideration petition). There are approximately 25 million existing cellular phones in this country most of which can be easily reprogrammed with this software. The Commission should use the rules to direct the non-compliant manufacturers(anyone on the C2+ list of phones that they reprogram - Exhibit 1) to immediately "harden" their ESN's instead of waiting until they submit a new model for type acceptance. In fact if the Commission and CTIA were really concerned about illegal fraud then they should recall all cellular telephones and "harden" them to meet the rules in place when they were type accepted. Instead some members of the Commission are trying to misapply its rules to small businesses such as ourselves and hundreds of others nationwide who can program phones to make them extension phones for bona fide customers.

We believe as does the SBA(Exhibit 2) that the rule change has been enacted by the Commission as a way to help the carriers and their lobby group(CTIA) monopolize the cellular industry. This action will cost consumers conservatively over a billion dollars per year in overcharges. We believe this is a case where the Federal Government is trying to over regulate a matter which should not be controlled by the FCC. We believe that there are upwards 5% or a 1 million cellular telephones that have modified or changed ESN's. Does the FCC and CTIA wish to have these phones declared as illegal, void type acceptance and be taken out of service? Some are extension phones but many are phones that have their ESN modified as part of a maintenance action. On page 7 and 8 of our petition, we quote paragraph 2.1001 of the rules relative to type acceptance in the context of a modified ESN. Because the ESN is stored in computer memory in the phone, we are not making any changes to the transmitter and therefore it is clear that an ESN change does not void type acceptance. Neither McCaw nor CTIA refuted this critical point so we believe that the Commission does not have jurisdiction over phones that have already received type acceptance and are owned by customers.

We believe that the Commission should respond favorably to all of the petitioners and drop the onerous clauses in paragraphs 58 to 63. We do believe that certain safeguards(see pages 12 & 13 of our original petition) need

to be built into the process. All petitioners agree on a basic list of safeguards. We think the Commission should find that FCC licensed technicians can change ESNs for customers who can prove that they have a legitimate need. This would include phones that have maintenance problems or phones to be used as an extension phone. Neither CTIA nor McCaw presented any proof or evidence that any firm in the extension phone business including C2+ has ever reprogrammed a phone for a customer who is trying to steal airtime. CTIA has been successful in having the Congress update Title 18 US Code(Exhibit 3) to include "Clone Phones" that "allow free riding of the cellular phone system." This carries a penalty of \$50,000 and up to 15 years in prison and the FCC does not need to "pile on" its own penalties which it does not have the resources to enforce. The Atlanta Constitution article(Exhibit 4) quotes AirTouch's McNaughton as stating "the FCC is not local law enforcement, meaning that they don't have the means to track down users". So in a new era of less government regulation and with the FCC trying to promote competition, we strongly believe that the Commission should permit ESN reprogramming under the controlled circumstances that we and the other petitioners have outlined.

The following paragraphs address in greater detail our responses to CTIA and McCaw:

1. MCCAW STATES THAT THE "EMULATION PETITIONERS ARE SELLING THE PUBLIC A SERVICE THAT IS INTENDED TO RIP OFF CELLULAR CARRIERS AND THEIR SUBSCRIBERS." THEY ALSO STATE THAT WE BELIEVE THAT THE "CELLULAR NETWORK IS A PUBLIC COMMODITY, WHICH IT IS CERTAINLY NOT".

These statements show a clear arrogance and a lack of reality. The cellular airwaves are publicly owned and the telephone network is a public network. This is why McCaw operates under the Common Carrier rules.

It is the carriers who are ripping the public off by charging customers between \$20 to \$30 per month for extension service when they have almost no cost to provide this service. At Southwestern Bell in Dallas/Fort Worth, they rolled out the flex phone service for \$9.95 per month and they had such a huge response from customers who dropped full line service that they had to quickly double the price to about \$20. If one averages the fees in the Atlanta newspaper article then the one time fee is \$175 -- if this is amortized over a 5 years period then the cost of extension service is \$3 per month! If the Commission would give us a level playing field we would be glad to compete with McCaw and CTIA's members and let the marketplace decide who is the "ripper".

2. MCCAW STATES THAT OUR EXTENSION SERVICE IS "SUBSTANDARD". THIS IS CLEARLY FALSE AS WILL BE EXPLAINED BELOW.

Again it appears that they did not read our petition. Very clearly our extension service is functionally superior to that offer by the carriers. The customer can have as many extension phones as wanted -- the carriers provide only one

or two. All of our phones can roam thereby meeting the Commission's compatibility standard -- only one of carrier's phones can roam. Our cost is \$3 per month versus \$20 to \$30 for the cellular carriers based on the plans that we have literature on. Our extension phones can be used on any of the cellular systems in the country not just the dozen or so where the carriers have installed MUSDN. We doubt that any of the RSA's will every have MUSDN since many switches can not be modified to provide the carrier-type of extension phone service.

3. MCCAW ASSERTS THAT EXTENSION PHONES SOMEHOW COMPROMISES THE FRAUD DETECTION SOFTWARE AND PLACES EXTRA REGISTRATION WORKLOAD ON THE SYSTEM.

McCaw introduced in their comments an anti-fraud technology being developed by TRW called RF "fingerprinting". This is a new unproven and very expensive technology and the fact that McCaw had to drag this out as a reason for the Commission to deny our extension technology shows how desperate they are. However, we can easily show that if they ever roll out this technology there won't be a problem. Just as with human finger printing, TRW can "fingerprint" multiple phones just as the police fingerprint all ten fingers. McCaw has stated that they are rolling out their own extension service in a number of markets so they are going to have to fingerprint multiple phone also. We have proposed to notify the carriers of multiple extension phones so McCaw can fingerprint each one.

A second problem McCaw cites is that an illegal cloned phone can "hide" behind an emulated phone. McCaw and CTIA failed to mention the two most important fraud detection tools. Many of carriers in the high fraud areas have rolled out PIN numbers which work very well with our extension phones since the customer has to key in a 4 to 6 digit number which is hard to detect by the illegal cloners. The other big weapon is fraud software that looks at shifts in calling patterns such as suddenly having daily bills equal to the monthly bills. Both the PIN number scheme and the usage fraud software can work well with our extension phone approach and largely solve the fraud problem.

McCaw is trying to use the same scare tactics that its parent AT&T used for almost two decades to ward off extension telephones in the 60's and 70's until the courts ordered them to permit free extension phones. McCaw conveniently overlooked that our extension phone program and that of the carriers all require that only one phone be powered on at a time. We make customers read and sign an agreement that two telephones turned on at the same time will create an ambiguous situation and could alert carrier fraud software thereby causing them to be cut off. This solves all of the problems that McCaw discussed in their opposition to our petition.

Since McCaw and CTIA responded to very few of the points in the 10 petitions for reconsideration, we urge the

Commission to carefully read all of these documents together with their exhibits since it is difficult to summarize all of this information in these shorten documents. We can assume that McCaw and CTIA could not refute these many points and therefore they must be true. We have provide a shorten list below:

4. CTIA AND MCCAW FAILED TO ADDRESS IN THEIR REPLIES HOW THESE RULE CHANGES WILL PREVENT THE CRIMINAL ELEMENT FROM CHANGING THE ESN'S IN APPROXIMATELY 25 MILLION EXISTING CELLULAR TELEPHONES WHICH CAN REPROGRAMMED IN MINUTES WITH A \$25 SOFTWARE PACKAGE. See pages 4 & 5 of our original petition.

5. CTIA AND MCCAW FAILED TO ADDRESS THE FACT THAT THE COMMISSION CAN NOT USE THIS RULE CHANGE TO PREVENT NON-LICENSEES FROM CHANGING ESN'S UNLESS IT CAN BE PROVEN THAT THIS ACT VOIDS THE TYPE ACCEPTANCE OF CELLULAR TELEPHONES. ON PAGES 7, 8 AND 9 OF OUR PETITION, WE QUOTED PARAGRAPH 2.1001 OF THE COMMISSION'S RULES THAT DEAL WITH TYPE ACCEPTANCE. IT IS CLEAR THAT WE ARE NOT CHANGING THE CHARACTERISTICS OF THE CELLULAR TELEPHONE TRANSMITTER NOR TYPE ACCEPTANCE. WE THEREFORE BELIEVE THAT THE COMMISSION OR CONGRESS WOULD HAVE TO PASS A SPECIFIC LAW TO PREVENT NON-MANUFACTURERS OR NON-LICENCEES FROM MAKING ESN CHANGES.

6. CTIA AND MCCAW FAILED TO RESPOND TO THE INFORMATION IN OUR EXHIBIT 1 IN THE ORIGINAL PETITION WHICH SHOWS THAT ALL MOTOROLA PHONES BUILT SINCE THE MID 80'S USE AN ESN SOFTWARE TRANSFER SCHEME. CTIA ERRONEOUS BELIEVES THAT MANUFACTURERS STILL USE BOARD TRANSFER PROCEDURES TO MOVE ESN'S. ALL OF THE MODERN MOTOROLA PHONES USE A SINGLE BOARD TRANSCEIVER AS DOES MOST MANUFACTURERS INCLUDING THOSE PRODUCED IN THE FAR EAST. ALMOST HALF OF THE CELLULAR TELEPHONES ARE MADE IN JAPAN, KOREA OR TAIWAN. APPARENTLY CTIA AND MCCAW WANTS TO HAVE THESE PHONES RETURNED TO THE FACTORIES OVERSEAS TO HAVE AN ESN MODIFICATION/REPAIR? COUPLED WITH THE FACT THAT NUMEROUS FIRMS HAVE STOPPED MAKING CELLULAR TELEPHONE LEAVES MILLIONS OF PHONE SUBSCRIBERS WITHOUT A VIABLE OPTION FOR MAINTENANCE ACTIONS REQUIRING AN ESN CHANGE.

7. CTIA AND MCCAW DID NOT ADDRESS OUR COMMENTS RELATIVE TO THE FACT THAT WIRELINE EXTENSION PHONES ARE PERMITTED AND THE RBOCS CANNOT PROHIBIT OR CHARGE FOR THESE PHONES. THEY DID NOT DISAGREE WITH US THAT A SECOND CELLULAR TELEPHONE WITH SAME MIN/ESN IS AN EXTENSION TELEPHONE. WE MADE MAJOR POINTS RELATIVE TO THIS ISSUE ON PAGE 10 OF OUR ORIGINAL SUBMISSION. BECAUSE CELLULAR HAS BEEN CLASSIFIED AS AN ADJUNCT TO THE

WIRELINE PUBLIC SWITCHED NETWORK. WE BELIEVE THAT CUSTOMER OWNED CELLULAR PHONE SHOULD BE PERMITTED JUST AS THEY ARE ON THE WIRED SYSTEM. THE COMMISSION HAS PREVIOUSLY RULED WIRELINE RULES SHOULD APPLY TO CELLULAR.

8. ON PAGE 8, WE PREVIOUSLY PROVIDED DETAILED FIGURES SHOWING THAT EACH CELLULAR CUSTOMER WILL BE OVERCHARGED BY THE CARRIERS BY \$1,080 PER PHONE IF ONLY THEY CAN PROVIDE EXTENSION PHONES. THIS AMOUNTS TO ABOUT \$1 BILLION PER YEAR OR \$5 BILLION OVER 5 YEARS. CTIA AND MCCA W DID NOT REFUTE OUR CHARGES THAT THIS RULE CHANGE IS SIMPLY ABOUT HUGE PROFITS AND THE DESIRE OF THE CARRIERS TO MONOPOLIZE AND CONTROL CELLULAR SERVICE. CTIA AND THE CARRIERS DON'T RECOGNIZE THAT THEY ARE TO SERVE THE PUBLIC INTEREST FIRST AND THEIR STOCKHOLDERS SECONDLY. THEY IGNORE THE FACT THAT THE AIRWAVES ARE OWNED BY THE PUBLIC. AS DEMONSTRATED BY THE ATLANTA CONSTITUTION ARTICLE, THE PUBLIC IS CLEARLY SERVED BY THE TYPE OF EXTENSION PHONE SERVICE THAT IS PERMITTED BY FIRMS SUCH AS OURSELVES AND THE OTHER PETITIONERS.

In conclusion, we believe that ESN modifications should be permitted under the controlled circumstances that we have outlined and processes go far beyond that which the carriers use in signing up customers for cellular service. If the Commission denies the petitions then we are concerned that there will be an underground market spring up to provide extension phone service. They will not take the same precautions that the existing firms such as C2+ and ourselves utilize. The other likely situation is that firms outside the US will offer the service as shown in Exhibit 5 and can offer the service for \$88 or less. They do not have to take the safeguards that we do since because they can not be prosecuted by Title 18, State and Local governments or the FCC. The same thing happened in the 60's and 70's when most of the extension telephone were imported into the US since there was no US supplier for non-produced Bell Telephone products. This was not a desirable situation

since some of the imported telephones were notst designed to work on the US telephone network.

Respectfully submitted,



M. G. Heavener

February 1, 1995

President
MTC Communications
Box 2171
Gaithersburg, Maryland
20886

CERTIFICATE OF SERVICE

I, Michael G. Heavener, hereby certify that on this 2nd day of February, 1995 copies of these comments were mailed sent by U.S. mail, postage prepaid, to the following parties:

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Senior Regulatory Counsel
McCaw Cellular Communications, Inc.
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Washington, DC 20032

Andrea D. Williams
Staff Counsel
CTIA
1250 Connecticut Avenue, N.W. , Suite 200
Washington, D. C. 20036



EXHIBIT 1

C-TWO-PLUS-TECHNOLOGY**3174 Mobile Highway - Montgomery, AL 36108 - Phone [205] 264-0264 - FAX 264-7190**

UPDATED PHONE LIST - JANUARY 1, 1995

ANY MAKE OR MODEL PHONE (EVEN ON THIS LIST) MAY BE THE PRIMARY PHONE. ALL SECONDARY (EXTENSION) PHONES MUST BE FROM THIS LIST.

AUDIOVOX

MVX500/MVX 700 SERIES (NOT 300 OR 600 SERIES)
*CTX3100A *CTR1900 *CTR2000 *832 & 83+
*CMT410a *BC55A *CTX4100A *4200
BC40, 45, 405, 410 CTX 3200
BC55, BC410, SP85, PRT-200, CTX1500, 2500, 4000
*PHASE 5: SP95, BC65, CMT420, PRM50, PRO50
TRANS 65, TRANS420, PRO98, PRT 75

AT&T

3610 HANDHELD (NOT JRC 3620 OR OKI 3630)

CELL STAR

SEE CURRENT MODELS OF MOT/NEC & UNIDEN

DIAMONDTel

MESA 95 OR 95X, ALL 90 SERIES & 200 (HEX SCREWS ONLY)

IVC

ALL HANDHELDS

KENWOOD

KMPF500 AND KMPH700

MITSUBISHI

800 & 1500 MODELS (HEX SCREWS MODELS ONLY!)

MOBIRA

TPA-4/400 THA 5/500

MOTOROLA

ALL TO DATE EXCEPT TDMA
PULSAR, MODAR, CELL STAR AND CAR MANUFACTURERS

MURATA

CT100 HANDHELDS

NEC

HANDHELDS P110/120/182 P200/201 (26B/26C)
HANDHELDS P300/301 (21A/26A) P400/401 P600/601
HANDHELDS P9000/9100 (9A/9C)
*3700 (TR5E800-11G) M4500(11A) 4600(11C)
M4700(11H) 4800(31A) 4801(31A)
M3800/3801(31B) NEW 3850

NOKIA

LX11/M11/12/15 SERIES (MUST SEND HANDSET W/ TRANS)

NOVATEL

HANDHELDS: PTR 825
TRANS/MOB 8300/8301/8305/8305A/ *8320/ *8320A

PANASONIC

HANDHELDS: HP600 SERIES (EB3500/3510/3511)
EB2500/2501/2501/2503 (500-800 SERIES)

PIONEER

ALL HANDHELDS/MOBILE/TRANSPORTABLES TO DATE

TANDY/RADIO SHACK

100 / 200 / 300 / 1000 SERIES

TECHNOPHONE

MC905 / 905A/ 985/ 995/ 915
(MUST SEND HANDSET & MATCHING TRANSCEIVER)

UNIDEN

TRANSPORTABLES & INSTALLS 900 THROUGH 1900 SERIES

CALL TODAY TO SEE IF THERE ARE MORE MODELS AVAILABLE, OR IF YOU QUALIFY TO BECOME AN AUTHORIZED C2+ DISTRIBUTOR. WE NOW HAVE LEASES AVAILABLE ON SOFTWARE TO ALLOW YOU TO EMULATE PHONES AT YOUR LOCATION.

IF IT'S NOT C TWO PLUS, IT MAY BE ILLEGAL!!!

EXHIBIT 2

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

4

Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Chairman Hundt:

On December 19, 1994, a number of petitions for reconsideration were filed in response to the Commission's Report and Order in CC Docket No. 92-115, Revision of Part 22 of the Commission's Rules Governing the Public Mobile Radio Services (September 9, 1994). The Office of Advocacy has reviewed this material and believes that the Commission should grant the petitions for reconsideration to address the very important small business issues raised by the petitioners.

As you know, the Commission issued a notice of proposed rulemaking to revamp the licensing of commercial mobile radio services in 1992. The Office of Advocacy filed extensive comments in response to that notice and our comments focused almost exclusively on efforts to improve the licensing regime for paging operators.¹ The Commission adopted our suggestions that Part 22 applications not be permitted on first come, first serve basis and that multichannel transmitters for paging service be approved. The Office of Advocacy commends the Commission for taking these vital steps in ensuring that only serious and viable candidates are considered for licenses pursuant to Part 22.

In the notice of proposed rulemaking, the Commission offered a potential solution to cellular telephone fraud.² According to the Commission, tampering with the cellular telephone's

¹ Until contacted by small businesses involved in reprogramming cellular telephones, the Office of Advocacy was not aware of the significance of the Commission's action with respect to cellular licensees.

² The Office of Advocacy's support of the petitions for reconsideration in no way condones the use of technology to defraud holders of cellular telephone licenses. Thus, the Office of Advocacy strongly endorses efforts by the Commission and appropriate law enforcement agencies to prosecute, to the full extent of the law, those businesses that reprogram cellular telephony equipment for customers who do not have a valid contract with an appropriate cellular licensee or reseller.

electronic serial number (ESN) has increased the opportunity for theft of cellular telephone service. The proposal found strong support from the cellular telephone industry. However, strong opposition was raised by companies that reprogram cellular telephones to emulate an ESN on another telephone; in essence creating an extension cellular telephone.³

The Commission adopted the proposed rule for three reasons. First, the Commission found that simultaneous use of cellular telephone ESNs, without the cellular licensee's permission, could cause problems in some cellular systems such as erroneous tracking or billing. Second, use of ESNs without the licensee's permission could deprive cellular carriers of monthly per telephone revenues to which they are entitled. Third, telephones altered without licensee permission would be tantamount to the use of unlicensed transmitters in violation of § 301 of the Communications Act. An examination of these rationales demonstrates that the Commission is more interested in protecting cellular telephone company revenue than preventing fraud.

First, the Commission cites no evidence that a company like C2+ or one of the many smaller businesses that reprogram ESNs for valid customers of cellular telephone companies is committing fraud, i.e., stealing service for which the reprogrammer's customers are not subscribers to the telephone licensee's cellular service. The petitioners have offered to provide a computerized database, if necessary, of their customers to cellular telephone companies to show that only customers with valid cellular contracts are receiving the reprogramming of ESNs. Nothing in the record demonstrates that this option would not be adequate in preventing fraud.⁴

Second, the Commission seems to believe that cellular telephone companies have some unbridled right to revenue. Prohibiting the use of ESN reprogramming would simply ensure that current cellular licensees capture all of the revenue associated with providing one-number cellular telephony to multiple cellular

³ As with an extension telephone in the home, two cellular telephones with the same ESN could not be used simultaneously. And two cellular telephones with the same ESN could be not be used to make calls to each other.

⁴ Obviously, unscrupulous businesses could reprogram cellular telephones without obtaining evidence of a valid contract between the customer and the cellular telephone company. However, the Commission's prohibition still would not prevent the operation of unscrupulous operations. It would simply make illegal currently legal operations and change law-abiding citizens into criminals by the stroke of the regulators' pen.

telephones.⁵ Nothing in the Communications Act mandates that cellular telephone companies are entitled to any specific amount of revenue for use of a public resource.⁶

The Office of Advocacy does not believe that the Commission has stated adequate grounds in support of its prohibition on reprogramming cellular ESNs. The Office of Advocacy believes that the petitioners have raised legitimate issues that need a full reexamination. Furthermore, the petitioners have offered a number of protections to cellular licensees to insure that fraud is kept to a minimum.⁷ The Office of Advocacy fully supports the petitioners efforts to maintain their businesses (most of which are relatively small), provide a useful service to many cellular customers, and ensure the existence of competition to cellular licensees in the provision of one-number cellular service.

Sincerely,

Jere W. Glover
Jere W. Glover
Chief Counsel for Advocacy

cc: Honorable Andrew Barrett, Commissioner
Honorable Rachelle Chong, Commissioner
Honorable Susan Ness, Commissioner
Honorable James Quello, Commissioner

⁵ The record is replete with examples of cellular telephone companies offering one number for multiple telephones but with their service the customer would have to pay a monthly charge for the feature.

⁶ Unlike their wire-line telephony siblings, cellular telephone companies face direct competition with another cellular telephone provider, resellers of cellular service, and soon, personal communication service providers. The Office of Advocacy does not understand why cellular telephone companies deserve the right to all revenue from one number for multiple cellular telephones when the Commission is trying to increase competition in wireless service.

⁷ It would indeed be naive of the Commission to believe that any regulatory regime, including prohibition, would eliminate fraud. That would require a change in human nature -- not even something the Commission appears to have the power to modify.

400 x REPORT

ASSISTANCE FOR LAW ENFORCEMENT

P.L. 103-434

[page 31]

SECTION 6 AND 7.—RADIO-BASED COMMUNICATIONS

ECPA does not protect communications that are "readily accessible to the general public," which includes radio communications, unless they fit into one of five specified categories. These excepted categories enjoy protection because they usually are not susceptible to interception by the general public.

The bill would add "electronic communication" as a category of radio communication covered by the wiretap statute. This would provide protection for all forms of electronic communications, including data, even when they may be transmitted by radio.

The bill also amends the penalty provision to treat communications using modulation techniques in the same fashion as those where encryption has been employed to secure communications privacy. This paragraph refers to spread spectrum radio communications, which usually involve the transmission of a signal on different frequencies where the receiving station must possess the necessary algorithm in order to reassemble the signal.

SECTION 8.—TECHNICAL CORRECTION

The wiretap law permits interception of *wire* communications by a wire or electronic service provider in the normal course of business to render services or protect rights or property. The bill would make a technical correction and expand the exception to include *electronic* communications.

SECTION 9.—CLONE PHONES

This section amends the counterfeit access device law to criminalize the use of cellular phones that are altered, or "cloned," to allow free riding on the cellular phone system. Specifically, this section prohibits the use of an altered telecommunications instrument, or a scanning receiver, hardware or software, to obtain unauthorized access to telecommunications services for the purpose of defrauding the carrier. A scanning receiver is defined as a device used to intercept illegally wire, oral or electronic communications. The penalty for violating this new section is imprisonment for up to fifteen years and a fine of the greater of \$50,000 or twice the value obtained by the offense.

SECTION 10.—TRANSACTIONAL DATA

Recognizing that transactional records from on-line communication systems reveal more than telephone toll records or mail covers, subsection (a) eliminates the use of a subpoena by law enforcement to obtain from a provider of electronic communication services the addresses on electronic messages. In order for law enforcement to obtain such information, a court order is required.

This section imposes an intermediate standard to protect on-line transactional records. It is a standard higher than a subpoena, but not a probable cause warrant. The intent of raising the standard for access to transactional data is to guard against "fishing expeditions" by law enforcement. Under the intermediate standard, the court must find, based on law enforcement's showing of facts, that there are specific and articulable grounds to believe that the

TITLE 18

A new twist on cellular

One number. An adjustment can make a second phone an extension of your first, meaning you'll be more reachable without paying more.

By Shelley Emling
STAFF WRITER

As a salesperson for Dial Page, [redacted] wants to make certain her customers can reach her whenever they need her. So she purchased an extension phone with the same number as her cellular phone about a year ago.

She keeps one phone in her car and one in her purse. She even bought a third cellular extension for her mother to carry in case of an emergency.

"It works out great for me because if I beep someone, I want to make sure people can reach me no matter what," the Atlanta resident said. "It makes me feel



JOHN SPINK / Staff

has had two phones converted to match a third.

that of your original cellular phone. The carrier's computer network picks up signals from the two phones as if they were coming from the same phone.

"We match up a second phone to your existing line for a one-time fee, then you just pay your regular monthly bill through the carrier," said [redacted], owner of [redacted]. "You pay just for the air time, which shows up on your regular monthly bill like it is coming from the same phone."

Business is booming. And the number of people using cellular phones keeps growing.

About 14 million Americans now own and use cellular phones; 11 percent of metro Atlantans have one. Discount stores sell them for as little as \$10.

Regulated carriers are preparing to strike back. BellSouth plans to launch a service in April or May that would allow customers to have two phones on one number, but without altering electronic serial numbers, a practice the company strongly opposes. Service fees have not been set.

"The extensions are good for people who are going to keep their phones long term, and it's good if you don't want to pay two or more monthly phone bills or service charges," said Jeffrey Kagan, president of Kagan Telecom Associates, a company that advises businesses on telephone use.

[redacted] purchased her extension at [redacted], one of several companies — usually one- or two-person operations — that have cropped up recently to provide the latest must-have in the telecommunications industry: cellular extensions.

Fast and furious service

Service at these places is fast and furious: It takes about 20 minutes. Extensions save on the monthly service charge you'd pay for a separate phone line.

Each cellular phone has a serial number that identifies it electronically on the cellular network. These businesses change the electronic serial number on a second cellular phone to match



[redacted] (right) hands a call to partner [redacted] at [redacted]. Multiple phones can be reprogrammed to function under a single number.

CELLULAR ADDITIONS: Where to get extensions for your cellular phone

Company	Established	Extension cost	Phone cost
[redacted]	[redacted]	[redacted]	\$15 to \$300
[redacted]	1992	\$175	New cellular phones are \$175; up; used phones are \$40 and
[redacted]	1992	\$165	Prices for cellular phones cover Customer mail in their cellular returns it with an exten-

Source: Staff research

But extensions do have drawbacks. The one-time fees can be expensive, though prices are declining quickly. In addition, you can't use the original cellular phone and the extension at the same time. Since both send out the same signal, doing so can confuse the carrier's communications network.

If you dial the number of the cellular phones and both are on, sometimes one phone will ring, sometimes the other will ring, and sometimes neither will ring.

Legal questions

Finally, there's a question of legality.

In September, the Federal Communications Commission issued an advisory opinion saying the use of altered cellular tele-

phones violated the Communications Act of 1994. But it is just an opinion and not legally binding.

"We think this means extensions are illegal, but the FCC is not local law enforcement, meaning they don't have the means to track down users," said David McNaughton, spokesman for AirTouch Cellular.

The issue of legality is likely to get stickier. The FCC apparently is considering a ruling requiring manufacturers to produce cellular phones that cannot be cloned. Still, it may be years before manufacturers have to comply.

Cellular service carriers say cloning increases the likelihood of fraud, and that your phone's electronic serial number should be safeguarded like your checking account number.

"Customers to give out their numbers to any Moore, spokes South Mobility. these businesses authorized by the erate."

But owners companies say they ask customer Security number or their service the carrier, and before providing

"We want to customer is the the cellular phone extension company everything we can that the person

EXHIBIT 5

Your choice has got to be...
M.F.M. COMMUNICATIONS.

for...



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PROGRAMMING**



only \$80

for each of the following phones...

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TECHNOFONE. 415, 405.

NOKIA. 101, *plus other models.*

MITSUBISHI. 800, 4000, *plus other models.*

DIAMONDTel. 22X, 95X.

AND... Please Call if your phone is not listed and for details & prices on our Programming kits.

Call Us Now on...

(UK) + 44-88-333-0060

M.F.M. COMMUNICATIONS.

57 Addison Road, Caterham. CR3-5LU. UK.

Prices do not include shipping.

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TEST CLIPS. No need to remove ICs. RCA DO Jack (100% compatibility).